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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

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No. 306

CARSON PETROLEUM COMPANY,

Appellant,

versus

LEON C. VIAL, SHERIFF AND TAX COLLECTOR FOR THE PARISH OF ST. CHARLES, LOUISIANA; R. H. DUBROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.,

Appellees.

APPELLEES' BRIEF.

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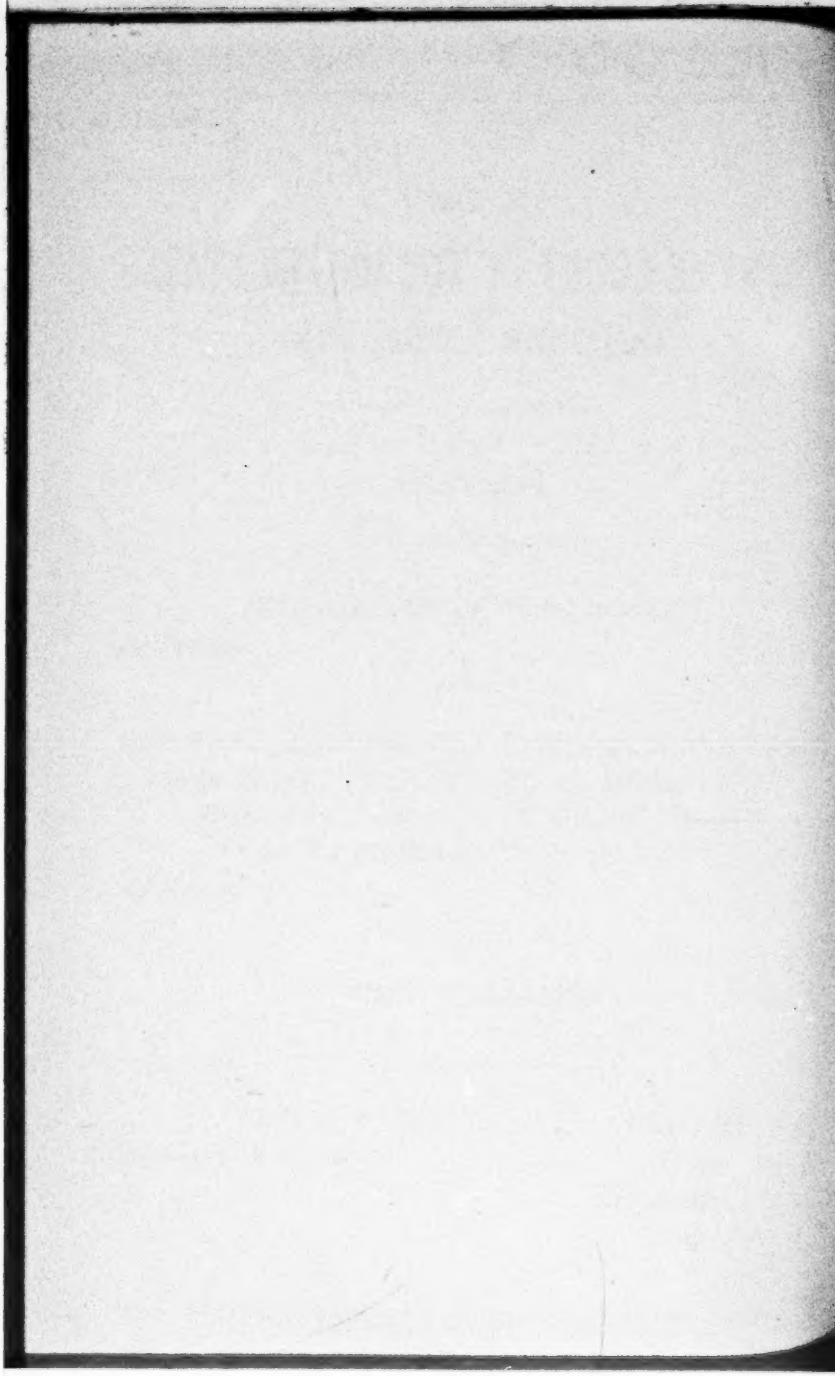

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STATEMENT OF THE CASE.

The statement of the allegations of the petition of appellant, as made in appellant's brief, is fair and accurate. We add thereto only the statement that the *quantum* of the assessment is not attacked.

STATEMENT OF FACTS.

In all cases where an assessment for taxes is alleged to violate the commerce clause of the Constitution as affecting property in transit in interstate or foreign commerce, a correct and complete conception of the facts is necessary. It is, therefore, essential that important omissions in appellant's statement of facts be supplied.

Oil is bought by the Carson Petroleum Company in various sections of the Mid-Continent Oil Fields, and is shipped to St. Rose, Louisiana, in tank cars consigned to the Petroleum Import and Export Corporation, its subsidiary (R. 13), and transferred from the tank cars to large storage tanks provided for its reception. The title to the oil is in the Carson Petroleum Company (R. 14). Insurance is carried on the oil for account of Carson Petroleum Company (R. 14), and it remains the property of the Carson Petroleum Company until, by loading aboard ship, it actually starts on its foreign journey destined to a new consignee (R. 15). No oil ever passes through St. Rose, Louisiana, on a through bill of lading (R. 14), and the quantity of a foreign shipment is never exactly pre-determined until loading is accomplished, the Carson Petroleum Company having the option of shipping, and the buyer taking ten (10%) per cent. more or less than his order (R. 10).

No showing is made that the oil in each railroad tank car is segregated or assigned or destined to any particular cargo or shipment abroad. A cargo is made up of the contents of from three to five hundred tank cars, twelve to sixteen trainloads (R. 10), and up to fifty tankers per year are shipped (R. 15).

THE PROPERTY ASSESSED WAS NOT IN TRANSIT.

It is thus completely shown that appellant's plant at St. Rose, Louisiana, is an *entrepôt* for the accumulation of oil which is not in transit in either interstate or foreign commerce. The interstate journeys are completed when the various shipments reach St. Rose, Louisiana, are delivered to the consignee and placed by it in storage tanks. The foreign journey does not begin until a cargo is determined upon, taken from the aggregate of these various shipments, loaded aboard ship, and consigned to a new consignee. In the meantime oil in the tanks at St. Rose, Louisiana, is property at rest in Louisiana and under the complete control of appellant. An assessment for taxes on the average quantity of oil there on hand, to-wit, $200,000.00, is not attacked as to *quantum*, and is apparently fair when it is remembered that as many as fifty shiploads of oil are started from this spot in a single year.

REPLY TO POINT I.

(a) It is idle to assert that the oil here assessed was on a continuous journey from the Mid-Continent Oil Fields to foreign destinations, when the record shows that the oil is bought at various refineries in the Mid-Continent section by appellant, shipped to the gathering place at St. Rose, Louisiana, and there delivered to its shipper and owner, appellant's subsidiary. It is the property of appellant at all times when it is in the tanks at St. Rose, Louisiana, and appellant's control of it is not lost until it is placed aboard ship and consigned to a new consignee. There are thus two journeys, or rather two kinds of journeys: many interstate journeys of the various cars or

trainloads from the Mid-Continent refineries to St. Rose, Louisiana, and one journey from St. Rose to points abroad. Between the points of origin and St. Rose, Louisiana, the journeys are continuous. Between St. Rose, Louisiana, and the foreign ports the journey is continuous, but there is a time between the end of the interstate journey and the beginning of the foreign journey that oil is at rest in the State of Louisiana and then the tax attaches.

The stoppage at St. Rose, Louisiana, was not an interruption only to promote safe and convenient transit, as in the case of *Champlain Realty Company v. Brattleboro, 260 U. S., 366*, where "the boom at the mouth of the West River did not constitute an *entrepôt* or *dépôt* for the gathering of logs preparatory for the final journey," but as in the case of *General Oil Company v. Crain, 209 U. S., 211*, the stoppage of the oil at St. Rose was because, "It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in *State, Detnold, Prosecutor v. Engle, supra*, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage."

And complainant in the *General Oil Company v. Crain* case protested that it was impossible to fill small orders from the tank cars, because of the great delay and expense incident to such a plan, just as appellant here

protests that it is impossible to fill large tank ships from tank cars for the same reason, and in the *Crain* case, as in this, an extensive plant and apparatus were necessary to properly and conveniently unload and receive the oil from the tank cars. An account of appellant's methods, just as the account in the *General Oil Company v. Crain* case, "describes a business—describes a purpose for which the oil is taken from transportation, brought to rest in the State, and for which the protection of the State is necessary—a purpose outside the mere transportation of oil." And the tax on such oil was upheld.

As was said by the Supreme Court of Louisiana, it is impossible to distinguish the case at bar from that of *General Oil Company v. Crain.* To speak of these various shipments to St. Rose, Louisiana, their being gathered together in storage tanks at that point, and a cargo being there determined and loaded aboard a ship, and then consigned to one who up to that time had not entered into the picture, as a "continuous journey" from the Mid-Continent Oil Fields to a foreign port, we submit, is not impressive.

The fact that appellant enjoyed a low freight rate because of its intention to export the oil, does not indicate that the State is without power to tax such oil as is at rest in the State.

Swift & Company v. United States, 196 U. S., 400.

(b) The safety of the oil was but a single factor in the equipment set up at St. Rose, Louisiana, for its

handling. This equipment is the "extensive plant and apparatus" necessary to the carrying on of appellant's business at a profit. In this plant, as before stated, the various shipments from the Mid-Continent Oil Fields were collected and stored until a cargo was determined upon, drawn from the tanks to the capacity of the tank steamer, loaded on such steamer, and consigned abroad, there being shown no greater necessity for safety at this point than at any other oil storage place or *entrepôt*.

REPLY TO POINT II.

The freedom from state taxation of goods actually in transit in interstate or foreign commerce is necessarily admitted. The inability of the State to lay imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws is admitted with equal candor. But we submit that the record conclusively shows the property herein assessed was not in transit in interstate or foreign commerce, but was between separate journeys at rest in Louisiana, kept there by its owner for its own business purposes and for its own profit, and was at all times under its complete control; that no attempt is made to levy any duty, but simply to collect from this property a just proportion of the general property tax as obtains in Louisiana.

REPLY TO POINT III.

The well-considered opinion of the Supreme Court of Louisiana (Tr. 22-31) demonstrates the correctness of its judgment herein. To the undisputed facts, and all of

them, in this case it has applied the law, as clearly laid down by this Honorable Court in the cases of *Coe v. Errol, 116 U. S., 517; Diamond Match Company v. Ontonagon, 188 U. S., 82; General Oil Company v. Crain, 209 U. S., 211*, as distinguished from and approved in *Champlain Realty Company v. Brattleboro, 260 U. S., 366.*

We submit that its judgment should be affirmed.

Respectfully submitted,

HARRY P. SNEED,
Counsel for Appellees.

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